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IN THE

Supreme Court of the United States

October Term, 1959

No. 637

DOESKIN PRODUCTS, INC. and KETA GAS & OIL COMPANY,

Petitioners,

v.

WILLIAM D. PETTIT and THOMAS J. CRAWFORD, Trustees of Swan-Finch Oil Corporation,

Respondents.

BRIEF AND APPENDIX FOR RESPONDENTS

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WILLIAM D. PETTIT and THOMAS J. CRAWFORD, Trustees of Swan-Finch Oil Corporation,

Respondents.

BRIEF FOR RESPONDENTS

Statement

Review of this application should be denied because it presents no federal question, no conflict among the circuits, no substantial injustice and no novel or important ruling of law. The case deals with an affront and a challenge to the administration of justice, involving a conceded larceny by a lawyer, Lowell M. Birrell, with whom the New York County Court of General Sessions is prepared to deal whenever Birrell chooses to depart from Rio de Janeiro, since neither Brazil nor our own government are capable of dislodging him.

The trustees below contended that "Birrell is still connected with Doeskin," one of the petitioners. (See Appel-

lants' Brief in Court of Appeals, pp. 8-14, upon which claim the Court made no specific ruling.) The proof offered to indicate Birrell's connection stands uncontroverted.

The Record

The appeal below was heard on abbreviated record under a stipulation that the exhibits (40 in number) would be handed up to the Court (Appellants' Appendix iii-v). Some of these exhibits here deemed relevant are reproduced in the accompanying appendix.

The Issues Tendered Below by the Trustees

The following were the propositions submitted:

1. Can a thief pass title to a stolen stock certificate with an alteration on its face, lacking endorsement?

2. Does the bankruptcy court have summary jurisdiction of stolen property under the doctrine of constructive possession?[1]

---

[1] "* * * the rule which gives the bankruptcy court exclusive jurisdiction to determine claims to property in its custody is not limited to actual possession, but extends to 'constructive' possession as well, including property held not only by but for the bankrupt."

2 Collier on Bankruptcy, 14th Edition, p. 473.

For a closely analogous factual situation see *In re Sapman*, 109 F. Supp. 815 (S. D. N. Y. 1953), in which District Judge Weinfeld (relying on *Taubel-Scott-Kitzmiller Company, Inc.* v. *Fox*, 264 U. S. 426, 433, 44 S. Ct. 396, 398, 68 L. Ed. 770; *May* v. *Henderson*, 268 U. S. 111, 45 S. Ct. 450, 69 L. Ed. 870; *Harrison* v. *Chamberlin*, 271 U. S. 191, 46 S. Ct. 467, 70 L. Ed. 897; *Schumacher* v. *Beeler*, 293 U. S. 367, 55 S. Ct. 230, 79 L. Ed. 433; *Cline* v. *Kaplan*, 323 U. S. 97, 99, 65 S. Ct. 155, 89 L. Ed. 97) held, at page 818:

"The respondent's tortious conduct did not give it legal possession. Legal possession remained in the bankrupt and so the Bankruptcy Court had constructive possession at the time of the filing of the petition and jurisdiction to enter the turnover order."

The Questions Here Presented Tender No Real Issue

1. The bankruptcy court has constructive possession of stolen property and therefore has summary jurisdiction.

2. *Cline* v. *Kaplan*, 323 U. S. 97, decided in 1944, has no application on the facts, and its effect has been minimized or abrogated by amendment to the bankruptcy statute in 1952.[1]

3. The entire doctrine of summary jurisdiction is now under examination by Congress which has a bill[2] pending to grant summary jurisdiction in all proceedings by trustees to recover preferences or fraudulent transfers.[3] There is therefore no pressing need, as claimed, for a review of the subject or a reexamination of *Cline* v. *Kaplan*.

The Essential Facts

The facts which are fully discussed in the three opinions (Petitioners' Brief, pp. 18-31, 34-46) will not be here repeated except to emphasize the following excerpts:

Judge Lumbard:

> "The basic facts are virtually undisputed. Lowell Mr. Birrell who dominated Swan-Finch and the three other companies involved, caused the name of the registered owner, 'Swan-Finch Oil Corporation,' to be altered by striking 'Oil' and typewriting over it the words 'Gas Development.'[4] A similar alteration in handwriting was made on the certificate stub. • • •

---

[1] See Appendix, p. 13, explanatory statement on *Cline* v. *Kaplan*.

[2] H. R. 4850, 86th Cong. 1st Sess. (1959). Appendix, p. 15.

[3] See discussion of proposed amendment, Appendix, p. 17.

[4] See stock certificate (Exhibit 1) reproduced in Appendix, p. 19.

"The trustee's claim derives from the contention that the debtor never authorized the transfer of the Keta shares to the Doeskin company or to its own wholly-owned subsidiary, Gas Development, but that such transfer as was purportedly made was carried out by a fraudulent agent of both companies, Lowell M. Birrell. The trustees contend that Judge Palmieri erred in holding that they may recover the shares transferred by Birrell only if they restore to Doeskin the shares it issued to Birrell. We hold that the transaction by which the Keta shares were transferred to Doeskin was entirely without authorization; that the receipt by Gas Development's president did not constitute receipt by the debtor of the Doeskin stock, and that therefore the debtor may recover the Keta shares from Doeskin without returning the shares given up by Doeskin in receiving them.

* * * *

"Swan-Finch Oil Corporation (Swan-Finch), a New York corporation with offices at 41 East 42nd Street, New York, was both a holding and an operating company, with 6,000 stockholders and assets of about $12,000,000. Its stock was traded on the open market. Until October 1, 1956 Birrell was a director and the principal executive officer and after that date he was also treasurer. Callahan was a director, a vice-president, and for a time in 1957 he was president. Mary Prior was a director, vice president and secretary." (pp. 35-36)

"Birrell also caused the fabrication of minutes of a Swan-Finch directors' meeting of January 4, 1956, and of a Gas Development directors' meeting of January 26, 1956, which minutes record the approval of the transfer of the Keta stock from Swan-Finch to its subsidiary Gas Development. But it is abundantly established that no one, aside from Birrell and Mary Prior, had any inkling that Keta was no longer a subsidiary of Swan-Finch. It is clear from the record that the alleged Swan-Finch meeting of January 4, 1956 and the alleged Gas Development meeting of January 26, 1956 never took place." (pp. 38-39)

Judge Hand:

> "The Keta shares had been validly issued, but they were never transferred to Doeskin Products Inc. Birrell, who was throughout the *deus ex machina* of the whole fraud, was not even president of the debtor, which was the registered shareholder of the shares. A majority of the debtor's directors had never agreed to their sale. *The change on the face of the Keta certificate did not affect the debtor's rights in any way whatever;* any subsequent transaction under the name of 'Gas Development Company', was of as little legal significance as though it had been in the debtor's own name. *Therefore I agree with my brothers that Doeskin Products Inc. never became assignee of the Keta shares; it was not even a bona fide holder of the certificates.* Nevertheless a certificate was issued for the shares in favor of Doeskin Products Inc., and I agree that the debtor is entitled to a cancellation of that certificate and to a new certificate which will be evidence of its right." (pp. 42-43) (Italics ours.)

The Findings Below Are Not Questioned

Petitioners do not question the findings below. They are conceded in their brief (p. 6). It is admitted that Birrell is "now a fugitive from this country" and that "with assistance from dupes and scoundrels effected the transaction about which the Trustees complain" (pp. 6-7). It is urged that the evidence against the petitioners was produced "in summary proceedings in which petitioners had few of the safeguards provided for in a plenary action" and that "So far as the Trustees' proof was concerned, petitioners had neither time nor opportunity to carry out discovery proceedings with respect to the facts" (p. 6).

This claim the trustees dispute. Petitioners overlook the fact that the trustees themselves had problems. Faced with the responsibility of administering a property with

a claimed book value of more than $12,000,000 (Petitioners' Brief, p. 6), they had no assets, no books and records, and no responsible officers and directors with whom to deal. All of the assets, which consisted mainly of stock certificates of subsidiary corporations, had been diverted, manipulated, pledged or foreclosed, and proceedings for their recovery were required. (See *Pettit* v. *Ocean Industries, Inc.*, 266 F. 2d 833, C. A. 2, 1959.) It is to be noted that the trustees were dealing wtih a publicly held company in which 6,000 stockholders had been defrauded (p. 36).

This Application Is Filed Solely to Delay and Should Be Promptly Denied

The Circuit Court entered judgment of reversal August 24, 1959. Petition for rehearing was denied October 13, 1959.

There has been no stay of the mandate, and judgment awarding the Keta stock certificate to the trustees was entered October 28, 1959.

Cognizant that this property is under court supervision, the petitioners delayed filing the pending application until January 8, 1960 (p. 17), which is hardly consonant with the contention that "petitioners have received no more than lip service wtih respect to their rights" by a distinguished court. Their statement, at pages 16-17, that they have been "Restricted to such facts as the Trustees saw fit to divulge" is disputed. Nor have they "been stripped of their property without their day in court." Nor has "the basic 'fact'" been "rammed home by overzealous Trustees" (pp. 16, 17).

Petitioners had a full and fair trial which they sought by every stratagem to delay and avoid. In advance of the hearing, they charged the District Court with bias and demanded disqualification (S.M. pp. 1107-8, 1183). They made no attempt to examine witnesses under the Rules of

Civil Procedure. Instead they sought a stay of the trial in advance of the hearing by application to the Court of Appeals, which was denied.

The trial judge held a full hearing, not merely a preliminary hearing as claimed (p. 16). The petitioners chose to give no proof; in fact, called no witnesses and rested on the trustees' case, calling only a bank officer and an accountant, who had already testified (see appellants' brief, p. 8). They admit that the property was stolen, and state that the basic facts are virtually undisputed (p. 6), thereby admitting that there was summary jurisdiction of property in the constructive possession of the Court.

The attempt to submit new facts on the application for rehearing comes too late (p. 9). No explanation is given for failure to submit such proof at the hearing or for the sources of these records. (During the hearing it was established that important Keta books and records were removed to Birrell's control in Havana, Cuba. See Exhibit 24, appendix p. 22, and that a check for $50,000 was delivered to him January 15, 1958 and cleared through a Havana bank, Exhibit 28, appendix p. 24.)

Describing the two-day trial, involving 9 witnesses and 40 exhibits, as a "drumhead summary proceeding" (p. 9) is unwarranted when compared with the record (see appendix p. 18 for a history of the case).

The Keta certificate is a property of dubious and uncertain value. The claimed valuation accorded the certificate should be compared with the summary of assets and liabilities filed in Keta's Chapter XI proceeding (Trustees' Exhibit 29, appendix p. 26).

The administration of this case and the Keta property under court control should not be further delayed.

Directly Responding to the Points Raised in the Petition

Two questions are set out in the petition, the first relating to bankruptcy, the second to appellate practice. The record below demonstrates that the first question is not a true issue in this litigation. Petitioners' attempt to introduce it here merely confuses a rather simple point of appellate practice which is the subject of their second question. This latter point, however, is moot in the instant case, and, in any event, has been decided against petitioners many times by this court. Neither of petitioners' questions presents an issue of substance warranting the granting of a writ of certiorari.

Petitioners' first question proceeds upon an erroneous assumption. In raising this question they assume that the Court of Appeals decided a question of bankruptcy law similar to that which was involved in *Cline* v. *Kaplan*, 323 U. S. 97. That case considered a waiver of a right to question summary proceeding resulting from the manner in which objections were made in the District Court. No such question of bankruptcy law was ever considered by the Court of Appeals nor raised in the briefs before it. As we demonstrate below what the Court of Appeals mentioned as an additional ground for denying the reargument motion was solely a question of appellate procedure.

The question of petitioners' waiver came about in an entirely different way, completely divorced from anything decided, or even mentioned in *Cline* v. *Kaplan, supra.* Upon the motion for reargument, the Court of Appeals pointed out: firstly, that it had not overlooked the substantive question of plenary against summary jurisdiction and after deciding that there was summary jurisdiction had proceeded to determine the question on the merits; secondly, and as a secondary ground for denying petitioners' motion for reargument, the Court observed that petitioners had waived their right to assert that question before it, in that they

had failed to cross appeal from that part of the decision of Judge Palmieri which had denied their cross motion to dismiss the proceedings for a claimed lack of summary jurisdiction. This latter observation of the Court of Appeals was merely a reaffirmation of the well established rule of appellate practice, and has nothing whatever to do with the waiver of the right to plenary suit by participation in summary proceedings as that point is discussed in *Cline v. Kaplan, supra*. That case dealt with a substantive point of bankruptcy practice, whereas the secondary observation of the Court of Appeals dealt with a question solely of appellate practice. Accordingly it is clear that the Court of Appeals did not decide what the petitioners' first question assumes it did decide, and that question presents no valid issue for this Court.

POINT I

The issue petitioners present to this Court for review is moot.

Petitioners complain that the Court of Appeals failed to pass upon the merits of their claim by holding that they had waived their objections.[1] In so asserting, they choose to ignore the plain fact that the Court of Appeals did consider the procedural propriety of disposing of this case by summary, as opposed to plenary, action. As the court pointed out, it proceeded on the merits "on the assumption that the denial of the cross-motion to dismiss the summary proceeding was correct" (270 F. (2d) at p. 700). Since the court did rule upon petitioners' claims, on the merits, they could hardly have been prejudiced by the court's additional holding that it was not obliged to so rule.

---

[1] This is the sole relevant issue raised in the "questions presented" portion of petitioners' brief. As such, it is the only issue before this court (Sup. Ct. R. 23(1)(c)).

POINT II

The Court of Appeal's secondary observation with regard to a cross-appeal is in accord with the decided cases.

As a secondary ground for denying petitioners' motion for reargument, the Court of Appeals observed that the District Court as part of its decision had denied petitioners' cross-motion to dismiss the summary proceedings on the point that a plenary suit was necessary in the instant case. Hence, the Court of Appeals stated that petitioners were precluded from raising this point without a cross-appeal. This ruling is in accord with the decided cases.

See:

Morley Constr. Co. v. *Maryland Cas. Co.*, 300 U. S. 185, 191, 81 L. Ed. 593, 597 (1936);

Helvering v. *Pfeiffer*, 302 U. S. 247, 82 L. Ed. 231 (1937);

Peoria & P. U. R. Co. v. *United States*, 263 U. S. 528, 68 L. Ed. 427 (1924).

In *Morley Constr. Co.* v. *Maryland Cas. Co., supra*, this Court pointed out precisely what the appellee may not do without taking a cross-appeal. The Court stated:

> "• • • What he may not do in the absence of a cross appeal is to 'attack the decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary, whether what he seeks is to correct an error or to supplement the decree with respect to a matter not dealt with below.' Ibid. The rule is inveterate and certain [citing *Peoria & P. U. R. Co.* v. *United States, supra*, and many other decisions.]"

In *Morley* v. *Maryland Cas. Co., supra*, appellees contended that they could support the decision of the District Judge by substituting specific performance for exoneration

which was granted by the District Court. This Court held unanimously that the appellee was not so entitled in the absence of a cross-appeal. The language of the opinion makes it clear that appellees do not gain the right to attack a decision below by seeking to substitute a similar although different decree.

In the instant case, petitioners seek to have Judge Palmieri's decree declared a nullity; to have his decision on the law declared anew and differently. By this attack on the District Court's decree they seek to gain the one right denied to them by that decree—the right to have their claims adjudicated in a plenary suit.

The decision of *United States* v. *American Railway Express Co.*, 265 U. S. 425, 68 L. Ed. 1087 (1924), relied upon by petitioners is not applicable. In that case, this Court merely restated the well-recognized rule that to support a decree appellee could raise additional grounds not raised below. As previously pointed out that is not what petitioners are trying to do here.

Petitioners' attack on the judgment in the District Court can in no sense be said to support its decree. In holding unanimously that petitioners had waived their objections to the decision of the District Court by failing to cross-appeal, the Court of Appeals merely followed the definitive precedents of this Court.

In conclusion, we respectfully submit that the statement in petitioners' brief that they pressed their claims to a plenary suit before both the District Court and the Court of Appeals is superfluous. The fact is that four judges heard their argument and were of the unanimous opinion, and so ruled, that the proper procedure to be applied was through summary proceedings. Petitioners completely ignore these rulings but base their entire argument upon a collateral ground of decision made on reargument which has no bearing on the substantive issues presented by this litigation.

CONCLUSION

The petitioners have shown no reason in law or in fact which would justify this Court in granting their petition for certiorari and therefore the petition should be dismissed.

Respectfully submitted,

GEORGE C. LEVIN,
Counsel for Respondents,
236 East 49th Street,
New York 17, N. Y.

MILTON KUNEN,
JOSEPH J. MOSCOU,
MICHAEL FINKELSTEIN,
of Counsel.

APPENDIX

Collier on Bankruptcy, 14th Edition, Volume 2, 1959 Supplement, p. 520, comments as follows with respect to *Cline* v. *Kaplan* (strongly relied on by petitioner):

> "The rule of *Cline* v. *Kaplan* has been abrogated by the amendment to § 2a(7) contained in Public Law 456 (S. 2234), 82d Cong., 2d Sess., approved July 7, 1952, effective October 7, 1952, * * * § 2a(7) was amended by adding thereto the following provision:
>
> '* * * and where in a controversy arising in a proceeding under this Act an adverse party does not interpose objection to the summary jurisdiction of the court of bankruptcy by answer or motion filed before the expiration of the time prescribed by law or rule of court or fixed or extended by order of court for the filing of an answer to the petition, motion or other pleading to which he is adverse, he shall be deemed to have consented to such jurisdiction;'
>
> * * *
>
> "This amendment is explained as follows in House Report No. 2320 on S. 2234, 82d Cong., 2d Sess. (1952) 4:
>
> 'Section 2(b) of the bill amends section 2a(7) of the act by adding a provision correcting a defect which has developed in section 23a of the act. It has seemed wiser, however, to amend section 2a(7) rather than section 23a, in order to make the change applicable to the entire act including the debtor relief chapters.
>
> 'The bankruptcy court, where a controversy involves property not in its actual or constructive possession, and adversely held, nevertheless has summary jurisdiction if the respondent consents thereto; and it has generally been held that a respondent consented when he did not object to such jurisdiction, either by preliminary motion or in

his answer, and proceeded on the merits. *Moonblatt* v. *Kosmin*, 55 Am. B.R.(N.S.) 267, 139 F.(2d) 412 (C.C.A. 3d 1943). However, in 1944, in *Cline* v. *Kaplan*, 323 U. S. 97, the Supreme Court overruled this line of cases and held, in effect, that a respondent is not to be deemed to have consented, if he made formal objection to the summary jurisdiction at any time before entry of the final order in the proceeding, even though the controversy had been proceeded with on its merits without his objecting to jurisdiction. This holding has unsettled sound procedure and an expeditious administration in bankruptcy. A respondent may now proceed on the merits and gamble on a favorable decision. When he perceives or fears that the decision will be against him on the merits, he may interpose his formal objection to jurisdiction at any time before the entry of the order, and, should his objection be sustained, the summary proceeding must be dismissed. In such event, the trustee is required to relitigate the issues in a plenary action.

'The proposed amendment is intended to overcome this unsatisfactory situation and is keyed to rule 12(h) of the Federal Rules of Civil Procedure, which requires the timely interposition of an objection to jurisdiction and, if not so made, the defense is deemed waived.' "

86th Congress
1st Session

H. R. 4850

IN THE HOUSE OF REPRESENTATIVES

February 23, 1959

Mr. Celler introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend subsection b of section 60—Preferred creditors; subsection e of section 67—Liens and fraudulent transfers; and subsection e of section 70—Title to property; of the Bankruptcy Act (11 U. S. C. 96b, 107e and 110e).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subdivision b of section 60 of the Bankruptcy Act is amended by striking therefrom the last sentence of subsection b and inserting in lieu thereof the following sentence: "The court, after due notice to all parties in interest, shall have summary jurisdiction of any proceeding brought under this section for the purpose of recovering or avoiding a preference."

SEC. 2. Subsection e of section 67 of said Act is amended to read as follows: "e. The Court, after due notice to all parties in interest, shall have summary jurisdiction of any proceeding brought under this section for the purpose of recovering or avoiding a transfer."

SEC. 3. Section 70 of said Act is amended by striking clause (3) of subsection e and by adding a new subsection f to read as follows: "f. The Court, upon due notice to all parties in interest, shall have summary jurisdiction of all proceedings brought under this section for the purpose of recovering or avoiding any preference, transfer, or obligation."

SEC. 4. Subsections f and g of section 70 are relettered as subsections g and h, respectively.

SEC. 5. The provisions of this Act shall apply to all cases in which the petition initiating the proceeding under the Bankruptcy Act is filed subsequent to the date of the enactment of this bill.

"SUMMARY JURISDICTION OF ACTIONS INVOLVING PREFERENCES, AND FRAUDULENT TRANSFERS

H.R. 4850—To amend subsection b of section 60—Preferred creditors; subsection c of section 67—Liens and fraudulent transfers; and subsection e of section 70—Title to property; of the Bankruptcy Act (11 U.S.C. 96b, 107c, and 110e). Pending before Subcommittee No. 4 of the House Judiciary Committee at adjournment.

After it had been approved by seven of eight judicial conferences of the circuits voting on it, this proposed legislation was recommended by the Judicial Conference of the United States at its March, 1958 session, and first introduced in the 85th Congress as H.R. 12186. It was not considered in that Congress and no action has been taken in the present Congress beyond reference of the bill to a subcommittee of the House Judiciary Committee.

The proposed legislation would give the bankruptcy courts summary jurisdiction of proceedings to recover or avoid alleged preferences, fraudulent transfers or obligations where plenary suits are now required unless the respondent consents to the exercise of summary jurisdiction by the bankruptcy court. The bill would eliminate consent as a prerequisite to the exercise of the summary jurisdiction."

Journal of the National Association of Referees in Bankruptcy, Vol. 34, No. 1, p. 18, January 1960

"DRUMHEAD SUMMARY PROCEEDING" (Pet. Brief, p. 9)

1958

June 20—proceedings initiated by order to show cause compelling deposit of stock certificate

June 20—return date advanced and answer filed

June 20—deposit of Keta certificate with Clerk of Court

July 11—trustees procure order to show cause requesting turnover of Keta stock certificate

Aug. 8—return date of turnover order

Sept. 5—petitioners seek stay of proceedings in Court of Appeals; denied

Sept. 9—two-day trial; 9 witnesses; 40 exhibits; virtually
10 no proof offered by petitioners; thereafter both sides submitted extensive briefs

Oct. 22—oral argument on the issues before District Judge

Nov. 10—opinion and findings filed

Nov. 22—order entered on opinion

Nov. 26—trustees and debtor filed notice of appeal

1959

Feb. 11—appeal argued

Aug. 24—Court of Appeals entered judgment of reversal

Sept. 8—petition for rehearing, suggesting for first time alleged new proof

Oct. 13—Rehearing denied

1960

Jan. 8—pending application filed

Trustees' Exhibit 1

Stock Certificate.

(See opposite ☛)

...ERTIFICATE

For 1,140,390 Shares

Issued to

Swan-Tweefontein Gas Pet Coy

Dated Sept 27 1955

FROM WHOM TRANSFERRED

Keta Gas & Oil Company

Dated 19

No. Original Certificate	No. Original Shares	No. of Shares Transferred
1	1,140,390	1,140,390

Received Certificate No.

for Shares

this day of 19

PENNSYLVANIA

KETA GAS & OIL COMPANY

Gas Development

This Certifies that Swan-Finch/~~Oil~~ Corporation is the registered holder

One million one hundred forty thousand, three hundred ninety - - - - - - - - - - Shares

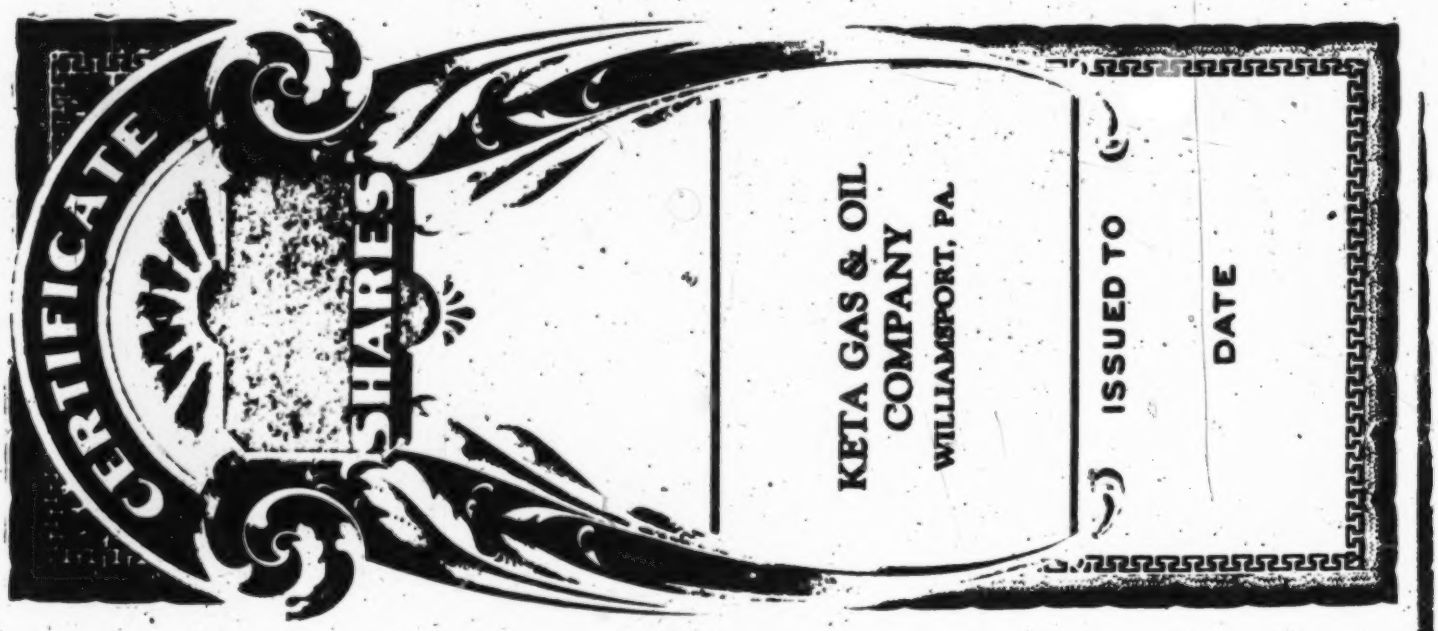
of the Common Stock of KETA GAS & OIL COMPANY

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 27th day of September A.D. 1955.

Mary B. Pratt
SECRETARY

[illegible]



For Value Received, hereby sell, assign and transfer unto

Shares represented by the within Certificate, and do hereby irrevocably constitute and appoint Attorney to transfer the said Shares on the books of the within named Corporation with full power of substitution in the premises.

Dated 19

In presence of

Trustees' Exhibit 24

LAW OFFICES
LEVINE, REMBAR & ZOLOTAR
521 Fifth Avenue, New York 17

OXford 7-1787
Cable Address: LITLAW

CALIFORNIA OFFICE:
233 South Beverly Drive—Beverly Hills

May 20, 1958

Hon. Edmund L. Palmieri
United States District Court
Foley Square
New York, New York

Re: Swan-Finch Oil Corporation, Debtor

Dear Judge Palmieri:

This letter is written in response to your Honor's request that I communicate to Keta Gas and Oil Company the desire of the Trustees to inspect the properties of Keta in and around Bradford, Pennsylvania and to examine Keta's books.

I am authorized to advise your Honor that the Trustees and their attorneys are invited to visit the Keta office at Bradford, Pennsylvania and to inspect its properties. The Trustees may also send their accountant to examine Keta's books at the Bradford office. Arrangements may be made upon request addressed to me.

I find that management had no intention to deny and did not deny the Trustees' previous request to visit Bradford, but had stated that arrangements should be made through the company's counsel.

Trustees' Exhibit 24

Reference was also made at the hearing yesterday to testimony by Mr. Patrick J. Woisted concerning Keta's books brought by him to New York City. I am enclosing copies of a letter sent by Mr. Woisted to Keta's Treasurer under date of April 15, 1958, and the demand of Mr. Richard H. Wels, of General Counsel for Doeskin Products, Inc., addressed to Mr. Woisted. These make it clear that the management has no knowledge of the whereabout of any of Keta's books of account that may be located in New York.

I am informed that there is a Keta corporate minute book at the Doeskin offices which the Trustees are free to inspect upon request. The minute-book is not complete.

Respectfully yours,

GEORGE ZOLOTAR

enes.

cc: George C. Levin, Esq.
Richard V. Bandler, Esq.

---

* Former counsel for petitioners; replaced by McCarthy, Kapelman & Nathanson.

Trustees' Exhibit 24

COPY

April 15, 1958

Mr. Clyde Wight, Treasurer
Keta Gas & Oil Company
P. O. Box 250
Bradford, Penna.

Dear Clyde:

I have just received a letter signed by Mr. S. J. Smiley as chairman of the board of directors of Doeskin Products, Inc. demanding all the check books and other records of Keta Gas & Oil Co. which I have in my possession. At the time of writing this letter I beg to inform you as Treasurer that I do not have any check books, letters or books of account in my possession. The ones that I worked with while in New York are either in Cuba or in the possession of Mrs. Prior, or some place to her knowledge. *The ones in Cuba were taken down by Mrs. Prior and myself and delivered to Mr. Lowell Birrell in Havana*, who gave them to Mr. Leon Drezner and myself to be taken over to an office in the Ambar Building in Havana, and so far as I know they are still there, but I cannot say for certain.

As you know, Keta Gas & Oil Co. owes me considerably money. Should they pay this money to me, together with an advance for the necessary expenses, I would go to Havana and try to procure those records that are there.

I do not know the interest that Mr. Smiley has in this company as per his letter, because although I have been informed that they are the sole stockholders due to the lack of information and records I do not know if this is so.

Best of everything.

/s/ Patrick J. Woisten

PJW:l
cc – S. J. Smiley
Doeskin Products, Inc.
41 E. 42nd Street
New York, N. Y.

Trustees' Exhibit 24

COPY

April 17 1958

Mr. Patrick J. Woisted
62-65 Saunders Street
Rego Park, Queens, N. Y.

Dear Mr. Woisted:

I have seen a copy of your letter to Mr. Clyde Wight of Keta Gas & Oil Co., a copy of which you sent to Mr. S. J. Smiley, Chairman of the Board of Directors of Doeskin Products, Inc., relating to the books and records of Keta.

I note in your letter you state that you and Mr. Leon Dresner delivered those books and letters to an office in the Ambar Building in Havana, Cuba. It is extremely important, as you know, that the company repossess those records immediately. On behalf of the company, I make demand upon you to inform me immediately to whose office in the Ambar Building such records were delivered, and the name or names of the person or persons to whom delivery was made.

When I talked with you the day before yesterday, you also indicated to me that there were additional records of Keta which were "parked" at some place up here to which you had access. I likewise make demand upon you to inform me of the location of such records here, and in whose custody they are.

Sincerely yours,

RICHARD H. WELS

RHW H
CC – Mr. S. J. Smiley

Trustees' Exhibit 28

438

H. J. SCHMITZ
3105 W. 27th Street
Chicago 23, Ill.

Date—Jan. 15, 1958

Pay to the Order of Lomega Explorations Ltd. $50,000.00
Fifty Thousand ..... Dollars

Chicago National Bank
430 South LaSalle Street—

H. J. SCHMITZ

LOMEGA EXPLORATIONS
LOMEGA EXPLORATIONS LTD.
Jay Fisher, President

Lowell M. Birrell

Pay to the Order of any Bank or Banker
The Royal Bank of Canada
Havana, Cuba

(Illegible Bank Stamps)

(Above Check Reproduced Opposite)

H.J. SCHMITZ
3900 W. 47TH STREET
CHICAGO 32, ILL.
438
$ 50000
DOLLARS
C

Ltd.

President

Lawrence M. Bartlett

Trustees' Exhibit 29

In Bankruptcy No. 22942

In the Matter of:

KETA GAS AND OIL COMPANY, Debtor.

COPY OF PROPOSED ARRANGEMENT

Your Petitioner is unable to pay its debts as they mature and proposes the following arrangement with its unsecured creditors:

Payment in full, over a period of five (5) years at a rate of one and two-thirds ($1\frac{2}{3}$) percent per month, commencing six (6) months after the date of the filing of the within Petition, without interest.

SUMMARY OF LIABILITIES AS SHOWN BY SCHEDULES:

Priority Creditors:	
Federal and State Taxes. (Unemployment, FICA and Withholding Taxes)	$ 97,929.76
Secured Creditors: None Listed	
Unsecured Creditors	2,357,681.60
	$2,455,611.36

SUMMARY OF ASSETS AS SHOWN BY SCHEDULES:

Real Estate—Gas and oil rights by lease agreements on approximately 380 properties leased for terms up to ten years and being held for future possibility of being prospected for producing wells. They may or may not

Trustees' Exhibit 29

have value in the future. Value unknown and cannot be estimated.		
Cash	$ 1,678.60	
Negotiable and Non-Negotiable instruments and Securities	500,550.00	
Furniture and fixtures....	2,000.00	
Automobiles and Vehicles..	4,500.00	
Machinery, Fixtures and Tools	658,000.00	
Other Personal Property..	116,434.00	
Debts due on Open Accounts	11,159.14	
Unliquidated Claims	80,943.59	
Bank Deposits	2,873.81	
		$1,378,139.14

In order to vote your Claim at these meetings, and to have it considered as for or against the Plan for an Arrangement, you must file a "Proof of Claim Form" in conformity with Section 57 of the Bankruptcy Act and General Order in Bankruptcy XI of the Supreme Court.

Creditors in favor of accepting the Arrangement, must file written acceptances of the Arrangement and Proof of Claim, on or before the initial meeting to be held on September 3, 1958, or any continuance thereof.

CHARLES A. MERTENS
Referee in Bankruptcy

CAM/gh